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REMARKS

By way of the foregoing amendment, Applicants have amended claims 1, 11-13, 32-33 and 41 to clarify the language of the claims. Further, Applicants have amended claim 23 to recite "to achieve a concentration in said tissue or said population of cells in the animal of at least about 0.1% metal by weight". This amendment is to clarify that the amount of 0.1% by weight refers to the concentration of metal nanoparticles in the tissue or the population of cells of the animal, rather than the concentration of metal nanoparticles in the entire body of the animal. This amendment is consistent with the teaching in the specification, e.g., at page 8, lines 12-16; page 24, line 16; page 37, line 5; and with the teaching relating to *ex vivo* radiation on page 25, lines 4-8. As disclosed in the specification on pages 36-37 (Example 6), the concentration of metal particles in various tissues can be readily determined. Applicants respectfully submit that the foregoing amendment does not introduce new matter.

Turning to the Office Action dated November 9, 2006, the Examiner has set forth a requirement for restriction under 35 U.S.C. §121, stating that the subject matter defined by the claims is directed to the following patentably distinct species:

- I. Administration of metal nanoparticles to an animal
- II. Administration of metal nanoparticles to an animal's tissue *ex vivo*

The Examiner further states that presently claims 1 and 2 are generic. The Examiner requires Applicants to elect a single species, to which the claims would be restricted if no generic claim is finally held to be allowable.

In order to be fully responsive to the Examiner's requirement for restriction, Applicants provisionally elect species I, directed to methods of administering an amount of metal nanoparticles to an animal. Currently, claims 1-25 encompass the elected species.

It is Applicants' understanding that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims directed to the additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim.

Applicants respectfully submit that a determination to make the pending restriction requirement final must evidence the patentable distinctness of the defined species, one from the other, as presented by the Examiner.

In view of the foregoing, it is respectfully urged that the Examiner reconsider and withdraw the requirement for restriction and provide an action on the merits with respect to all the claims.

Respectfully submitted,



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